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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/665,662	09/19/2003	Kendra Gallup	10030807-1	8572
7590	12/09/2004		EXAMINER	
AGILENT TECHNOLOGIES, INC.			NGUYEN, JOSEPH H	
Legal Department, DL429			ART UNIT	PAPER NUMBER
Intellectual Property Administration				
P.O. Box 7599			2815	
Loveland, CO 80537-0599			DATE MAILED: 12/09/2004	

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)	
	10/665,662	GALLUP ET AL.	
	Examiner	Art Unit	
	Joseph Nguyen	2815	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 11 November 2004.  
 2a) This action is FINAL.                            2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-9 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1-9 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on 19 September 2003 is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) Notice of References Cited (PTO-892)  
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
 Paper No(s)/Mail Date 9/19/03.

4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date. \_\_\_\_\_.  
 5) Notice of Informal Patent Application (PTO-152)  
 6) Other: \_\_\_\_\_.

## DETAILED ACTION

### ***Election/Restrictions***

Applicant's election of claims 1-9 in the reply filed on 11/11/2004 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 3-8 are rejected under 35 U.S.C. 102(b) as being anticipated by Spaeth et al (US 5,981,945).

Regarding claim 1, Spaeth et al discloses on figure 2 a structure comprising a device 6 that emits an optical signal from a top surface of the device; a sub-mount 1 containing electrical traces 5 that are electrically connected to the device; and a cap 7 attached to the sub-mount so as to form a cavity enclosing the device, wherein the cap includes an optical element 8 (central portion of element 8) in a path of the optical signal.

Regarding claim 3, Spaeth et al discloses on figure 2 bonding of the cap to the sub-mount hermetically seals the cavity.

Regarding claim 4, Spaeth et al discloses on figure 2 the cap comprising a spacer ring 7 attached to the sub-mount 1; and a plate 8 (side portion of element 8) attached to the spacer ring.

Regarding claim 5, Spaeth et al discloses on figure 2 the optical element 8 (central portion of element 8) is formed on the plate 8 (side portion of element 8).

Regarding claim 6, Spaeth et al discloses on figure 2 the spacer ring comprises a silicon substrate having a hole formed there through (col. 3, lines 52-53).

Regarding claim 7, Spaeth et al discloses on figure 2 the plate 8 comprises a glass plate (col. 3, line 39).

Regarding claim 8, Spaeth et al discloses on figure 2 the plate 8 comprises a glass plate (col. 3, line 39).

Claims 1,3 are rejected under 35 U.S.C. 102(b) as being anticipated by Oshio et al.

Regarding claim 1, Oshio et al discloses on figure 1 a structure comprising a device 1 that emits an optical signal from a top surface of the device; a sub-mount 10 containing electrical traces 21 that are electrically connected to the device; and a cap 10A attached to the sub-mount so as to form a cavity enclosing the device, wherein the cap includes an optical element 9 in a path of the optical signal.

Regarding claim 3, Oshio et al discloses on figure 1 bonding of the cap to the sub-mount hermetically seals the cavity.

Claims 1-3, 9 are rejected under 35 U.S.C. 102(b) as being anticipated by Yuen et al.

Regarding claim 1, Yuen et al discloses on figure 4C a structure comprising a device 101 that emits an optical signal from a top surface of the device; a sub-mount 103 containing electrical traces 130 that are electrically connected to the device; and a cap 501 attached to the sub-mount so as to form a cavity enclosing the device, wherein the cap includes an optical element 543 in a path of the optical signal.

Regarding claim 2, Yuen et al discloses on figure 4C the sub-mount further comprises internal bonding pads 126, 130 that are within the cavity and connected to the device; and external terminals 125, 129 that electrically connected to the internal bonding pads and are accessible outside the cavity.

Regarding claim 3, Yuen et al discloses on figure 4C bonding of the cap to the sub-mount hermetically seals the cavity.

Regarding claim 9, Yuen et al discloses on figure 4C a post 502 attached to the cap where the optical signal emerges from the cap.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph Nguyen whose telephone number is (571) 272-1734. The examiner can normally be reached on Monday-Friday, 7:30 am- 4:30 pm. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tom Thomas can be reached on (571) 272-1664. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306 for regular communications.

JN  
November 30, 2004

  
ALLAN R. WILSON  
PRIMARY EXAMINER